



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 4040-99

18 February 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

Ref: (a) Title 10 U.S.C. 1552  
(b) DODINST 1332.38

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that her naval record be corrected to show that she transferred to the Retired Reserve with eligibility for retired pay at age 60.

2. The Board, consisting of Mr. Dunn, Mr. Pfeiffer and Ms. Gilbert, reviewed Petitioner's allegations of error and injustice on 8 February 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Naval Reserve on 3 November 1991 for six years and drilled in an excellent manner for almost five years. On 21 August 1996 she was found to be temporarily not physically qualified for the selected reserve. Subsequently, she was found not physically qualified for retention in the Naval Reserve and was honorably discharged on 3 June 1998. At the end of her anniversary year on 24 August 1996 she was credited with 18 years of qualifying service. In the next anniversary year she was credited with 37 retirement points. This is not a qualifying year apparently because she was no longer able to drill.

d. The "Temporary Special Retirement Qualification

Authority" was enacted into law in 1992 and is codified at Title 10 U.S.C. 12731a. The law allows retirement of reservists with 15 years of qualifying service during the period 23 October 1992 to 1 October 1999. As indicated Petitioner completed 18 years of qualifying service on 24 August 1996. The law further states, in part, as follows:

... the Secretary concerned may, consistent with the other provisions of this section, provide the notification (of eligibility for retired pay at age 60) to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of a physical disability ...

Reference (b) states that individuals who have over 15 years of qualifying service and are to be separated for physical disability shall be afforded the opportunity to elect either separation for physical disability or early qualification for retired pay at age 60 under the provisions of 12731a of Title 10.

e. The Board finds that if Petitioner had been properly advised she could have completed correspondence courses and earned qualifying years from 25 August 1996 until her discharge on 3 June 1998 which would have placed her within three months of qualifying for retirement.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. If she had been properly advised she could have completed correspondence courses to earn additional qualifying years. Given her many years of good service, the Board concludes that Petitioner should have been given an opportunity to request early retirement under the provisions of Title 10 U.S.C. 12731a and reference (b). Therefore, the record should be corrected to show that she transferred to the Retired Reserve with eligibility for retired pay at age 60 effective 1 June 1998 vice being discharged on 3 June 1998.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand her status in the Retired Reserve.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she transferred to the Retired Reserve on 1 June 1998 in the rate of AK2 with eligibility for retired pay at age 60 under the provisions of Title 10 U.S.C. 12731a.

b. That this Report of Proceedings be filed in Petitioner's naval record.

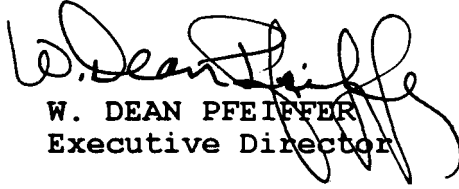
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director